

**OFFICE OF HEARINGS AND APPEALS
WEEKLY REPORT**

March 6, 2009

Decisions Issued:

Personnel Security (10 CFR Part 710)

On February 27, 2009, an OHA Hearing Officer issued a decision in which he concluded that an individual's suspended access authorization should not be restored. A DOE Operations Office suspended the individual's security clearance when a routine reinvestigation of the individual revealed that he (i) was experiencing severe financial difficulties, (ii) had been arrested in 2005 for failure to update his registration as a sex offender and for driving with no proof of insurance or valid registration, and (iii) provided conflicting information to the DOE regarding the date that he had committed a felony and his date of marriage to a former spouse. After conducting a hearing and evaluating the documentary and testimonial evidence, the Hearing Officer concluded that the individual had not intentionally provide false or misleading information to the DOE. However, the Hearing Officer further found that the individual was experiencing severe financial difficulties, with no realistic hope of relief in the foreseeable future, and had engaged in a pattern of illegal behavior that called into question his ability or willingness to abide by security rules and regulations. The individual failed to produce evidence sufficient to overcome these security concerns. OHA Case No. TSO-0675 (Robert B. Palmer, H.O.)

On March 5, 2009, an OHA Hearing Officer issued a decision in which she determined that an individual's access authorization should not be restored. In reaching this conclusion, the Hearing Officer found that the individual had failed to mitigate the security concerns associated with her diagnosis of Bipolar Disorder type II, a recent episode of depression, her failure to file taxes and habitual gambling. In reaching this determination, the Hearing Officer found, after weighing the psychiatric testimony and other evidence, that the individual's mental condition was not stable and therefore posed an unacceptable risk to national security. The Hearing Officer further found that the individual's failure to file taxes demonstrated that her illness is significant enough to impair her judgment and reliability. However, with respect to her gambling, the Hearing Officer found that the individual had sufficiently mitigated the concern based upon evidence that her gambling was not pathological or beyond her financial means. OHA Case No. TSO-0666 (Avery Webster, H.O.)

On March 5, 2009, an OHA Hearing Officer issued a decision finding that an individual's access authorization should not be granted. During a background investigation, the local DOE security office (LSO) discovered inconsistencies between the individual's responses to the illegal drug question on his 2006 Questionnaire for National Security Positions (QNSP) and his responses regarding his illegal drug use during a 2007 Personnel Security Interview (PSI). Security concerns were also raised by the individual's history of illegal drug use, including his admission to using marijuana 100 times between 1972 and 1991, using hashish one time in 1973, using marijuana prior to going to work six or seven times between 1973 and 1974, and failing a drug test while previously holding a DOE security clearance in 1990.

After carefully weighing all the evidence, both favorable and unfavorable, the Hearing Officer found that the individual presented compelling evidence to mitigate the security concerns associated with his past illegal drug use. However, the Hearing Officer found that the individual had failed to mitigate the security concerns regarding his misrepresentations on his 2006 QNSP. The Hearing Officer also found that the individual had failed to mitigate the security concerns about his reliability and trustworthiness associated with using marijuana while holding a security clearance. OHA Case No. TS0-0677 (Kimberly Jenkins-Chapman, H.O.)

Appeal

On February 24, 2009, OHA issued a decision granting an appeal filed by the Environmental Protection Bureau of the State of New York (New York) under the Freedom of Information Act (FOIA). In its appeal, New York contested a determination issued to it by the Department of Energy (DOE) Office of Electricity Delivery and Energy Reliability (OE), which released information to New York in accordance with an October 2008 OHA order that granted in part an appeal from a previous determination. New York argued that OE continued to withhold information from documents that OHA ordered disclosed or withheld subject to a new determination (Documents 23(a), 26 and 27). OHA conducted a review of the withheld information and the terms of the October 2008 order. As a result of the review, OHA found that OE had properly continued to withhold one sentence from Document 27, as stated in the October 2008 order. As for Document 23(a), OHA found that OE had properly continued to withhold exempt information. However, OHA also concluded that Document 26 may contain some factual, non-exempt and segregable material, and thus should be reviewed again by OE. Therefore, the appeal was granted in part, and remanded to OE. OHA Case No. TFA-0289